

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

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Inquiry Concerning the Deployment of)
Advanced Telecommunications)
Capability to All Americans in a Reasonable)
And Timely Fashion, and Possible Steps)
To Accelerate Such Deployment)
Pursuant to Section 706 of the)
Telecommunications Act of 1996)

CC Docket No. 98-146

**COMMENTS OF THE
DSL ACCESS TELECOMMUNICATIONS ALLIANCE ("DATA")**

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SUMMARY

The Digital Access Telecommunications Alliance is a coalition of advanced data and voice service providers seeking to ensure and promote competition in digital subscriber line (“DSL”) services. Because it utilizes existing copper local loop facilities, DSL technology is an important tool for the delivery of affordable advanced services in the near-term.

Unfortunately, vigorous competition in DSL services is currently being stifled by the anticompetitive actions of incumbent local exchange carriers. The only two components necessary for competition in DSL-based services—physical collocation and access to “clean” copper loops—are being denied by incumbent LECs who are now belatedly seeking to enter the DSL market.

In order for the Commission to meet its statutorily mandated obligation to promote the delivery of advanced services to all Americans, it must act aggressively to tear down the barriers being constructed by the incumbent LECs.

In particular, the Commission must:

- Stop the ILECs from denying competitors access to “clean” copper loops;
- Stop the ILECs from denying competitors access to timely and affordable physical collocation;
- Require incumbent LECs to provide collocation in their Digital Loop Carrier vaults;
- Establish national industry standards for spectrum management so that incumbent LECs cannot continue to deny loop request on that basis;
- End the current price squeeze imposed by the ILECs, whereby the aggregate cost of DSL elements sold to CLECs is greater than the retail price of the equivalent DSL service.

TABLE OF CONTENTS

SUMMARY	i
INTRODUCTION	2
DISCUSSION.....	3
I. VIGOROUS COMPETITION IN THE PROVISION OF DSL-BASED ADVANCED SERVICES REQUIRES ELIMINATING THE ARTIFICIAL BARRIERS CONSTRUCTED BY INCUMBENT LECS	3
A. Competitors Are Moving Rapidly to Build-out DSL-based Advanced Services.....	3
B. Technological And Capital Barriers To Building Out DSL Services Networks Are Minimal	5
C. ILECS Are Naturally Incentivized to Hinder and Delay The Onset Of Competition For DSL Services.....	8
II. PROMOTION OF ADVANCED SERVICES REQUIRES NO NEW CHANGES BY THE COMMISSION, ONLY ENFORCEMENT OF EXISTING LAW AND RULES	9
A. Incumbents Block Competition by Denying Access to “Clean” Copper Loops.	11
B. ILECs Improperly Deny Access to DLC Vaults.	13
C. ILECs Impose Unilateral Spectrum Management Policies for Anticompetitive Effect.....	16
D. ILECs’ Denial of Access to Affordable Physical Collocation Halts Progress of Competition.....	17
E. The Disparity Between the Rates Charged By ILECs to CLECs for Wholesale Inputs and the Retail Prices Charged to Consumers Places Competitors in Illegal Price Squeeze	18
CONCLUSION.....	18

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**COMMENTS OF THE
DSL ACCESS TELECOMMUNICATIONS ALLIANCE (“DATA”)**

The DSL Access Telecommunications Alliance (“DATA” or “Commentators”), by its attorneys, respectfully submits these comments in response to the Commission’s August 7, 1998 Notice of Inquiry¹ in the above-captioned docket.

DATA is a coalition of advanced data and voice service providers seeking to ensure and promote competition in digital subscriber line (“DSL”) services. Member companies include Rhythms NetConnections, Inc. (“Rhythms”), FirstWorld Communications, Inc. (“FirstWorld”) and First Regional TeleCOM, LLC (“First Regional”). DATA believes that in considering the deployment of advanced services under Section 706, the Commission must focus at least as much, if not more, on the development and growth of competing service providers, as on the provision of DSL by incumbent local exchange carriers (“ILECs”).

¹ *Inquiry Concerning the Deployment of Advanced Telecommunications Services Capability to Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, Notice of Inquiry, CC Docket No. 98-146 (rel. August 7, 1998) (“NOI”).

INTRODUCTION

The Commission instituted this proceeding under its statutory obligation to “encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans.” 47 U.S.C. § 706(s). Digital subscriber line technology is an important means for delivering advanced services in a cost-efficient and rapid manner. Steps taken by this Commission to ensure robust competition in DSL services will go far toward meeting the Commission’s obligations under Section 706.

DSL is a dynamic and powerful means of delivering high speed broadband services. DSL-equipped copper loops can provide data transmission speeds of up to 7 Mbps — sufficient bandwidth for simultaneous delivery of voice, data and video services. Thus, deployment of DSL is rejuvenating the value of the existing copper local telephone network and eliminating the need for hugely expensive bandwidth solutions such as “fiber to the home.”

Via DSL-equipped services, introduction of advanced services to commercial customers is already on-track. However, a significant barrier to further competition — access to affordable physical collocation and “clean” copper loops — has been constructed by those in control of the local loop, the incumbent LECs. As a result, until the provisions of Sections 251 and 252 of the Telecommunications Act of 1996² are enforced, and ILECs are required to make physical collocation and access to clean copper loops available to CLECs, competitive progress will be slow, and the widespread distribution of advanced services will be delayed. Related competitive barriers include a lack of access for CLECs to incumbent LECs’ Digital Loop Carrier (“DLC”) vaults and incumbents’ denial of loop requests based on so-called “spectrum management” policies.

An additional barrier to entry exists. On top of the delays CLECs face in gaining access to physical collocation and copper loops required to provide DSL-based services, competitors face a price squeeze at the hands of the incumbent LECs. The incumbents are offering DSL services at retail prices that are lower than the aggregate price of the individual elements required by competitors to produce the same service. This price squeeze effectively keeps data-CLECs out of the residential marketplace while the incumbents lock-in customers.

The Commission cannot rely solely on the ILECs for delivery of advanced services. In fact, there would be no provisioning of DSL services today at all if not for CLECs, which were the first to develop commercial retail DSL services. Now that the ILECs have finally decided to join the DSL market, they have an incentive to employ their control over the local loop and the central offices to delay CLEC entry into the marketplace, while they themselves reap the benefits of being “first to market.” Thus the near-term future of competition in wireline-based advanced services is dependant upon strict implementation of the 1996 Act, and in particular, upon the Commission taking affirmative steps to ensure that competitors have full and timely access to the “essential facilities” of the local loop.

DISCUSSION

I. VIGOROUS COMPETITION IN THE PROVISION OF DSL-BASED ADVANCED SERVICES REQUIRES ELIMINATING THE ARTIFICIAL BARRIERS CONSTRUCTED BY INCUMBENT LECs

A. Competitors Are Moving Rapidly to Build-Out DSL-Based Advanced Services

The Commission seeks comment regarding the status of advanced services build-out, and specifically “about [individual commentors’] own . . . facilities, current construction and ideas . .

² Pub.L. 104-104, Title VII, Feb. 8, 1996, 110 Stat. 153, 47 U.S.C. 151 *et seq.* (“the Act” or “the 1996 Act”).

. and predictions about the willingness of the capital markets to finance any or all of them.” NOI ¶ 18. All three members of DATA are in the process of seeking to provide innovative, advanced DSL services and support to an ever-widening group of consumers.

Rhythms is a comprehensive networking solutions company that provides high speed data communications that combine local access through the deployment of DSL services, with capacity balanced local and wide area networks. Rhythms entered commercial services in San Diego on April 1, 1998 after a two-month test period and is currently rolling out services in California’s Bay Area as well as Los Angeles and Orange County, with plans to expand to thirty nationwide markets over the next three years. Moreover, Rhythms is already certified to provide telecommunications services in at least some form in eleven states, including California, Illinois, Indiana, Maryland, Massachusetts, New Jersey, New York, Oregon, Pennsylvania, Virginia and Washington.

FirstWorld is a rapidly growing facilities-based, integrated communications provider, offering business customers enhanced services including voice, data, Internet, video and systems integration. FirstWorld currently serves Orange County, the San Gabriel Valley, and the South Bay region of Los Angeles County with plans to expand into at least twenty-two additional states over the next several years starting in the first quarter of 1999. Although fiber optic based networks have been until now the primary focus of its business expansion, FirstWorld is aggressively deploying ADSL services as a mean of providing high bandwidth connections to its smaller corporate customers.

First Regional provides voice and data local exchange services to residential consumers in multi-occupancy buildings, and is certificated, or pending certification, to provide telecommunications services in the District of Columbia, Maryland, and Virginia. First Regional plans ex-

tensive deployment of intra-building DSL build-out to deliver alternative local, long distance and data services to residents in a high bandwidth format.

In the NOI, the Commission notes several technological approaches to the challenge of bringing advanced telecommunications services to consumers under Section 706 of the 1996 Act. These include cable modems, high-bandwidth wireless services, digital television, and new satellite networks. Although DATA recognizes that all of these technologies have long-term potential for helping achieve the goal of bringing a wide variety of services to the market, they all face significant technical barriers before they will ever be truly widespread. The only technology that promises short-term, rapid and widespread deployment, and is a proven and effective conduit of advanced services to consumers, is DSL. DSL also promises to remain a competitive and profitable conduit in the long-term, even when these other technologies may be more accessible.

B. Technological And Capital Barriers To Building Out DSL Services Networks Are Minimal

The incumbent LECs mischaracterize what is needed to promote rapid deployment of advanced services in America. DSL is a technology several decades old, having been initially developed at Bell Labs in 1968, and proposed by at least one Bell Company eight years ago as part of its video dialtone proposal.³ Despite the availability of DSL for so many years, and the routine use of HDSL to provision T-1 services, no ILEC actually offered DSL services until 1998. This late entry has occurred in direct response to the flood of DSL and other digital offerings, led by members of DATA and other competitive LECs.

³ George T. Hawley, ADSL Data: The Next Generation, *Internet Telephony* (Aug. 12, 1996).

The only existing technical barrier is loop length – and that has been and will continue to be addressed over time. The fact that only a few years ago DSL service was only effective over local loops less than 12,000 feet long and is now proven reliable and effective up to distances of 21,000 feet or more is surely an indication of the growing capability for this technology. The features of the network that the incumbent LECs usually cite as technical encumbrances, such as “digital loop carrier, bridged taps and loading coils,” NOI ¶ 22, are either not as pervasive as the ILECs would have regulators believe, or in fact do not present as much of an insurmountable technological problem as is commonly assumed. The marketplace presence of numerous DSL-based CLECs, including the members of DATA, indicates that competitors and investors have confidence that the existing facilities of the switched network are sufficient to sustain commercially successful DSL-based services.

The ILECs have contended in previous FCC proceedings and in public pronouncements that the recent rapid expansion of high bandwidth services, and Internet usage generally, poses an alleged bottleneck or “shortage” of backbone bandwidth. This concern is echoed by the Commission in its inquiry. NOI ¶¶ 25-6. While such a backbone shortage might conceivably occur at some point in the future, such a bottleneck simply does not exist today. In fact, there are multiple backbone providers, such as Sprint, Cable & Wireless, MFS and several others, all in rigorous competition with each other to provide the market with still more bandwidth capacity for the backbone. As Cisco Systems proudly touts in its television advertisements, Internet traffic doubles every 100 days,⁴ and there are no signs of any impending collapse in spite of the ravenous consumer appetite for bandwidth. Thus, experience has shown that the market has filled “the need for backbone on its own, and faster than Commission inquiry and rulemaking

proceedings could possibly move.” NOI ¶ 25. Advanced service provisioning is not about backbone supply, but rather about access to the “first mile.”⁵

Access to capital is very plainly not an obstacle to the effective provision of DSL services. Venture capital has poured into the accounts of dozens of new entrants, as potential investors have recognized the unique and lucrative opportunities which present themselves in the emerging area of voice and data transmission over DSL circuits. The marketplace has provided sufficient capital and competitors to achieve pervasive access to advanced services, and DATA members are not in that class of CLECs “that lack reasonable access to adequate capital. NOI ¶ 29.

The DATA commentators alone have a combined private capitalization of debt and equity of nearly \$1 billion, and have not yet needed to contemplate any public offerings in order to raise funds to install and expand robust DSL networks across the country. The sole concern of the many venture capitalists who are eager to build-out these networks is that new DSL entrants will be accorded equal regulatory treatment by federal and state authorities. As discussed below, this can only be assured by rigorous enforcement of the terms of the 1996 Act with respect to access to collocation and clean copper local loops.

⁴ See also Cisco Corp. advertisements (<http://www.cisco.com/warp/public/750/ads.html>), viewed September 14, 1998.

⁵ The Commission should not impose any “time-specific schedule or set objective targets” for the delivery of advanced services, NOI ¶ 59, but rather first insist upon immediate access by competitors to the network elements necessary for delivery of advanced services. As described above, the capital resources available to new entrants and the opportunities CLECs believe are present dictate that deployment of DSL capability and the growth of demand for such services will not “occur slowly in the early years, as was the case with cable television and cellular service.” NOI ¶ 61. Indeed, the experience of these earlier technologies has awakened investors and capital markets to the huge opportunities in the telecommunications market for value-added services, so that the tardiness of introduction that occurred then is extremely unlikely to happen again.

C. ILECS Are Naturally Incentivized to Hinder and Delay The Onset Of Competition For DSL Services

A significant economic barrier to DSL-based competition exists. The Commission has sought comment on incumbent LECs' "incentives to enter new markets [created by DSL opportunities] and on the implications of such entry on the deployment of [DSL capabilities]." NOI ¶ 27. Despite the fact that ILECs have been aware of DSL technology for decades, they have only built-out as a result of the Telecommunications Act of 1996 and outside competition. Until now, incentives have existed for ILECs to delay development of DSL while they continued to reap monopoly rents on outdated services like ISDN and T1 lines. No player with such entrenched hardware and plant as an ILEC can resist the temptation to avoid the development and installation costs implicit in the rollout of DSL services, while they can comfortably continue to reap windfall revenues from the outmoded delivery systems that are their profit centers.⁶ Thus the incumbent LECs have resisted expenditures to build out DSL systems so as to keep a lid on customer demand and yet further expense.

Now that the "cat is out of the bag" and DSL-based competitors are using the 1996 Act to gain access to the first mile, ILECs have decided to roll-out their own DSL services. The entrepreneurs who have rushed to meet the incipient demand for the advanced capabilities represented by DSL have awakened the sleeping incumbent LECs to the possibility of lucrative new profit centers, and proven that, in the post 1996 Act world, even the incumbents must deliver innovative services or lose revenues. As a result, ILECs are currently incentivized to

⁶ See Reply Comments of the DSL Access Telecommunications Alliance ("DATA"), CC Docket Nos. 98-11, 98-26, 98-32 (May 6, 1998) ("DATA Reply Comments") at 10.

delay DSL competitors' provisioning of advanced services while they catch-up to competitors and prepare to enter DSL market in full.⁷

In Section of II of these comments, DATA describes some of the methods by which the ILECs create artificial delays in collocation and loop access to new entrants like CLECs.⁸ By delaying market entry by CLECs, incumbent LECs seek to take advantage of their ability to be "first to market." In doing so, ILECs can grab the lion's share of the nascent high bandwidth market. Incumbents hope to secure their future profits by "locking-in" consumers via unreasonably long contracts or exorbitant penalties imposed for switching carriers. So long as ILECs have successfully blocked the market entry of new DSL CLECs, consumers have no choice but to accept these anti-competitive terms for the high bandwidth services they crave.

Thus, the incumbents' economic incentive remains diametrically opposed to the development of full and vigorous competition in the DSL marketplace. Because the incumbent LECs are also in direct control of the facilities necessary for new entrants to compete, the Commission must be aggressively vigilant in ensuring that competitors are allowed access to the incumbents' networks.

II. PROMOTION OF ADVANCED SERVICES REQUIRES NO NEW CHANGES BY THE COMMISSION, ONLY ENFORCEMENT OF EXISTING LAW AND RULES

The Commission asked commentors to identify existing barriers to investment in advanced services infrastructure, and to suggest how it might "use price-cap regulation, regulatory

⁷ In comments filed in response to several ILECs' petitions for forbearance under Section 706, CC Docket Nos. 98-11, 98-26, 98-32, several competitive LECs reported difficulty in gaining access to loops and collocation. See DATA Reply Comments at 7; Commercial Internet Exchange Association at 17-19 ; MCI at 18; AOL at 4; Internet Access Coalition at 4-5, XCOM Technology at 7, n.19; APK Net at 4, 10.

⁸ See Notice of Ex Parte communication by Jeffrey Blumenfeld on behalf of Rhythms NetConnections Inc. regarding CC Dockets No. 98-11, 98-26, 98-32, 98-91 (July 20, 1998) ("Attachment A").

forebearance, measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment.” NOI ¶ 69.

In general, the Commission should not request any fundamental statutory change from Congress to address advanced services, nor should it pursue any deregulatory or forbearance policies with regard to DSL provisioning of the incumbent LECs. Any delay that currently exists in the deployment of advanced services is not the result of the structure of the current regulatory framework, but rather the enforcement of that framework. Moreover, any fundamental statutory change would in effect be an attempt to rewrite the Act and would be an unnecessarily lengthy and arduous process. At the same time, enforcement of the existing regulatory structure—as demanded by Congress in Sections 251 and 252 of the Act—is absolutely crucial to a transition from a monopoly to a competitive environment.⁹

As indicated above, DSL-based competition is not currently barred by any existing technological or investment-related barrier. Rather, the critical barriers to infrastructure investment have been artificially created by incumbent LECs in a manner consistent with their monopoly-based economic interests. All that is required to provide high-speed DSL services is timely, unobstructed access to “clean” copper loops and physical collocation at reasonable rates. In order to ensure rapid deployment of DSL-based services, the Commission must act affirmatively to address each of the following five barriers erected by ILECs to delay the market entry of new DSL-based CLECs: denial of access to DSL-capable loops; denial of access to physical

⁹ As the Commission recognizes, the antitrust laws are also an important aspect of that transition. NOI ¶ 81. However, the Commission cannot rely on the antitrust laws alone. Antitrust solutions take far too long, and court battles are too expensive for new competitors to afford. The landscape of competition in the advanced service marketplace is being resolved in weeks and months, not years and decades; more expeditious solutions are necessary.

collocation; denial of access to DLC vaults; unilateral loop spectrum policies; and wholesale pricing of DSL components at odds with retail prices for DSL services.

A. Incumbents Block Competition by Denying Access to “Clean” Copper Loops

In order to provide DSL-based services, CLECs require access to DSL-capable copper loops. A loop is considered “clean,” or DSL-capable, where it carries no load coils, or excessive bridge taps. The process of provisioning a clean loop is sometimes referred to as loop “conditioning.”

Although the status of existing copper loops varies widely, the vast majority of loops can be rated as DSL-capable. The ILECs, however, have concocted a number of artificial and technologically unnecessary techniques for denying, delaying and raising the cost for access to their loops.¹⁰ In many cases, incumbent LECs simply refuse to negotiate for access to DSL-capable loops. They assert that they are not required by any law or regulation to provide access to a “DSL-capable” loop. Alternatively, ILECs create their own novel definitions of what it means for a loop to be DSL-capable, and then proceed to deny or limit access to competitors based on those grounds, not the competitors’ actual needs. For instance, an incumbent LEC may claim that it has no “DSL-capable” loops available in a particular area because the existing loops are too long, incapable of sufficient “speeds” or otherwise “incompatible” with DSL service in some manner. There are no competitively neutral industry-wide definitions for any of these terms. Moreover, the incumbents’ paternalistic determinations regarding loop compatibility occur regardless of the CLEC’s actual requirements for the loop—as if somehow the ILEC knows better than the competitor what will work and what won’t.

¹⁰ See Comments of DSL Access Telecommunications Alliance (“DATA”), CC Docket No. 98-91 (June 24, 1998) (“DATA/SBC Comments”) at 6-9.

In many cases, the ILECs refuse to even reveal the results of tests conducted on the loops, simply stating that there are no compatible loops available. Thus, new entrants are forced to play “hide-and-go-seek” with the incumbents to find sufficient loop infrastructure to meet consumer demand. In many cases, “unavailable” loops may not meet the ILEC’s definition of DSL-capable, but may work perfectly well for the CLEC’s needs. This denial of information and arbitrary decision-making by the incumbents is clearly anti-competitive. Beyond the fact that this behavior unnecessarily slows’ new competitors’ access to loops, it is a barrier to entry presented to CLECs that the incumbent never has to face. That is, an incumbent LEC always knows or can find out the exact condition of any loop in its system, and is never told that a loop is incapable of DSL services without an explanation why.

In order to address these barriers, the Commission must take several steps. First, ILECs must be required to provide more information about their loops, and not be allowed to dismiss requests based on unique definitions of “DSL-capable” that may or may not having anything to do with a competitor’s needs. Second, the Commission can encourage competition by enabling the standardization of loop capabilities. Such standards must be industry-wide and competitively neutral in origin. Both incumbents and new entrants must participate in the process. Third, the Commission must enforce its decision to apply the unbundling and resale provisions of sections 251 and 252 of the Act to DSL-capable loops. Only by preserving the regulatory leverage of resale and unbundling can the Commission be sure to stimulate pro-competitive behavior by the incumbent LECs.¹¹ No other step presents the incumbents with sufficient economic incentive to break from their existing pattern of delay.

¹¹ DATA’s members are facilities-based competitors and have little interest in reselling the DSL services of an incumbent LEC, however, the very presence of a resale and unbundling requirement provides CLECs an
(Footnote continued on next page)

B. ILECs' Denial of Access to Affordable Physical Collocation Halts Progress of Competition

Access to physical collocation is the key to competition for all DSL-based new entrants.¹²

The Act requires that incumbent LECs must make central office space available to competitors unless they can demonstrate that none is available. There does not exist, however, any objective standard for determining if and when the incumbent is truly "out of space" at a central office. Competitors are forced to rely solely on the incumbent's determination that space is unavailable. As a result, DSL-based providers such as Rhythms have had as much as 25% of their requests for physical collocation rejected, even though the age of digital switches has drastically reduced the ILECs' internal space needs.

DATA urges the Commission to take an active role in determining whether physical collocations are truly unavailable. The Commission should develop a set of standard measures and definitions that can be used nationwide to compare central office space availability. The Commission, competitors and, most importantly, consumers have an interest in knowing whether "out of space" means no more space in a particular cage, a room, a floor, or in the entire central office building. Because access to physical collocation is absolutely critical to DSL-based competition, the Commission should require that only where an entire central office building is completely built-out with communications equipment should physical collocation be denied, and other alternatives considered. The Commission should further insist on specific measures for verifying these conditions, such as allowing competitors to inspect the central offices that incumbent LECs claim to be full and requiring ILECs to account for non-collocation-related or actual central

important alternative when access to loops and collocation are denied. It is the availability of this alternative that will drive ILECs to comply with the interconnection requirements of the Act.

¹² See Comments of DSL Access Telecommunications Alliance ("DATA"), CC Docket Nos. 98-11, 98-26, 98-32 (April 6, 1998) ("DATA Comments") at 9-11.

office use of its central office buildings. Finally, the Commission should establish a process for certifying that “out of space” claims are consistent with these detailed standards.

In addition to insisting on complete use of ILECs’ central offices, the Commission should require that all technically feasible methods of collocation must be made available to competitors on an equal priority basis, as required by the Act. To date, the ILECs have employed a “first-come, first-served” collocation policy that could be more accurately stated as “me always first, you always last.” Where collocation space is available for an incumbent to install DSL equipment, then room must also be made available for competitors.

It is also important to realize that some types of collocation are much more efficient for particular competitors. Thus, all carriers must have the flexibility to select the collocation alternative that best meets their needs. Incumbents must not be permitted to mandate the collocation alternatives for CLECs, including any priority hierarchy. Further, incumbent LECs should be required to expand the collocation options available. DATA proposes that at least the following additional methods of collocation should be made available.

1. Adjacent On-Site – The ILEC constructs structure on the property of the central office and allows carriers to place their equipment in the structure and runs facilities into the central office to the MDF.
2. Adjacent Off-Site – The ILEC or the CLEC constructs or rents a structure in close proximity to the central office, but off the property and the carriers perform a type of mid-span meet to take the facilities from the CLEC’s equipment into the central office and onto the MDF.

These collocation alternatives are either in use or are being considered in different jurisdictions. These alternative collocation architectures are precisely the types of “other alternative

physical collocation arrangements” that the FCC is seeking “to lower the cost of collocation and thereby facilitate competition in the advanced services marketplace.”¹³ By explicitly adopting these forms of collocation now, the Commission could forge a path of progressive regulatory environment that could jump-start competition for advanced and innovative telecommunications services, such as DSL. DATA strongly urges the Commission not to stop with alternatives to direct physical collocation, but first, to move to standardize the process by which central offices are deemed “out of space.”

incumbent LECs also impede competition via collocation build-out intervals and imposed costs. In some cases, ILECs simply flat-out deny access. Often, however, they impose highly burdensome collocation intervals of 12-18 months. Incumbents regularly require time-consuming procedural steps before the stated (and over-long) interval even begins — easily doubling the time to completion. Moreover, ILECs often delay provisioning of DS-3 links to competitors POPs — intervals of 90 days are very common, even though retail intervals of 2-3 weeks are available — a necessary step for the provision of data services.

Similarly, physical collocation, where available, is rarely affordable. “Standard” collocation costs range from \$30,000 to more than \$100,000. On top of that, ILECs often impose extraordinary “preparation” charges for physical collocation, of up to \$250,000 above basic costs. For most DSL providers, similarly equipped virtual collocation offers no solution as virtual costs as much or more as physical collocation.

¹³ *Petition of Bell Atlantic Corporation for Relief from Barriers to Deployment of Advanced Telecommunications Services*, Memorandum Opinion & Order and Notice of Proposed Rulemaking, CC Docket No. 98-11, FCC 98-188, ¶ 142 (rel. Aug. 7, 1998).

C. ILECs Improperly Deny Access to DLC Vaults

Another way in which incumbent LECs limit the build-out of competitors DSL networks is by denying access to their Digital Loop Carrier (“DLC”) vaults. With growing regularity ILECs run copper line from the customer premises to a remote collection point or “vault,” where the signals are encoded for higher-speed digital transmission on DLC facilities (usually fiber) from the vaults to the central office. It is agreed that DSL services cannot operate on DLC facilities. Therefore, where a CLEC runs DSL services from a customer premise that is serviced by a DLC vault, the CLEC must either have access to the vault—in order to collocate a DSL Access Multiplexer (“DSLAM”) to translate the DSL signal to DLC-compatible signals—or have access to an alternative copper wire from the vault to the central office.

Because the remote vaults used by the ILECs for DLC are relatively small, ILECs regularly deny access to CLECs on the grounds that no space is available. However, this policy of “first-come, first-served” is clearly anticompetitive and impractical. If the incumbent LECs are not required to make space available at the DLC vaults, they will be left with the intuitive economic realization that they need only build DLC vaults throughout their networks to preclude all DSL-based competition. Moreover, by flatly denying the availability of space at their DLC vaults, the ILECs are unfairly reserving for themselves the ability to add equipment at those sites in the future.

The ILECs also incorrectly argue that they are not required to provide access to their DLC vaults because doing so would be the equivalent of requiring “sub-loop unbundling,” a step not mandated under the Commission’s rules. This claim is based on the notion that the DLC vault is but a single component of a loop running from the customer to the central office, and that requiring the ILEC to provide access to the vault is, in effect, requiring it to unbundle and charge

separately for the independent components of the loop. In reality, however, the CLECs are requesting and paying for the loop in its entirety, not just a single component. The only difference between a typical copper loop and a DLC-equipped loop is that in order for a competitor to deploy DSL services over a DLC loop, access to the DLC vault is required. No sub-loop pricing is requested or needed. Thus the Commission should require incumbent LECs to provide CLECs access to DLC vaults equal to the access the ILECs themselves enjoy.

Finally, in order to maximize network efficiency, ILECs routinely provide facilities rearrangements for themselves, including transferring customers from copper to DLC and vice versa. Similarly, where ILEC-imposed DLC facilities block DSL availability, and access to the DLC vault is legitimately unavailable, the incumbent LECs must be required to make any available facilities rearrangements to accommodate CLEC provisioning of DSL services. This is often a low-cost solution that ILECs are used to providing to themselves, but refuse to provide to competitors.

D. ILECs Impose Unilateral Spectrum Management Policies for Anticompetitive Effect

ILECs also deny access to copper loops on the grounds that competitors' DSL-equipped loops cause unacceptable spectrum interference in the bundles to which they are attached.¹⁴ These claims are based upon nothing more than unilateral decisions by the incumbent LECs to employ incompatible technological solutions. In fact, many ILECs employ DMT, a DSL encoding technology with extremely high spectrum interference characteristics, but then deny competitors loop requests as if the interference issues were solely the responsibility of the CLEC.

Rather than allow the incumbent LECs to deny loop requests based on unilateral technology decisions, the Commission should establish a process by which the

industry—including ILECs, competitors and equipment vendors—can jointly agree on competitively and technically neutral standards, analogous to the Commission’s Part 68 registration program, for the deployment of DSL technology using any commercially available modulation scheme. This would permit consumers the maximum choice of technologies and services by enabling the marketplace, rather than the ILECs, to determine the appropriate variety and mix of DSL technologies that can be provided over copper loops.

E. The Disparity Between the Rates Charged By ILECs to CLECs for Wholesale Inputs and the Retail Prices Charged to Consumers Places Competitors in an Illegal Price Squeeze

Incumbent LECs have set the wholesale price inputs for DSL services levels so high, and retail consumer prices so low, that in many markets, no new entrant can compete with the incumbent on price. In fact, if the TELRIC-based prices for DSL elements that have been approved by some states are accurate, the incumbent LECs **must** be offering their retail services at a loss. The Commission should flat-out deny approval of any ILEC’s DSL tariff that does not track with the component rates charged to competitors at the state level. Smaller, more lithe competitors may be more efficient than the ILECs, however even the leanest CLEC cannot compete in a below cost market.

¹⁴ See DATA/SBC Comments at 5.

CONCLUSION

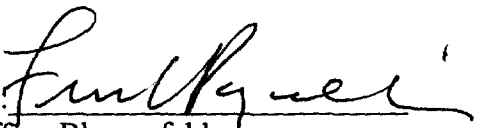
DSL-based competition, and thus competition in a primary source for advanced services, is currently dependent upon the behavior of the one set of entities with the greatest economic incentive to prevent competition. Section 706 of the 1996 Act requires the Commission to take the regulatory steps necessary to ensure the rapid delivery of advanced services to the American people. In order for the Commission to meet that obligation with regard to DSL services, it must take an active role in ensuring that competitors have access to the "first mile" in a timely and affordable manner. The competition that will result from that effort will drive down prices, stimulate new services and expand the geographic scope of advanced services provisioning.

Respectfully submitted,

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Dated: September 14, 1998

ATTACHEMENT - A

DSL Access Telecommunications Alliance DATA Comments on RBOC 706 Petitions

Section 706 Should Ensure Increased Broadband Competition (e.g., DSL)

- Competitors dependent on ILEC bottlenecks (loops, collocation, etc.)
- ILEC claims that they provide equal interconnection to DSL competitors are FALSE
 - “Dry copper” and “DSL-capable loops” are difficult or impossible to procure from ILECs
 - Collocation routinely denied, citing space restrictions
 - Collocation ordering intervals long, unequal and routinely missed (while RBOCs rollout own DSL services in record time)

RBOCs Assert Unilateral Right to “Gatekeep” DSL Entry

- Digital Loop Carrier (DLC)—RBOCs plan to retrofit DLC “vaults” for compatibility with their own DSL services
 - Correlative CLEC ability to equip DSL vaults immediately is vital
 - FCC must act quickly or else CLEC interconnection “rights” will effectively be useless
- “Spectrum Management”—RBOCs (e.g., SBC) impose unilateral “guidelines” on interference criteria that exclude both competing DSL technologies and competing DSL providers (guidelines are not technically or competitively neutral)
 - RBOC guidelines give priority to ILEC services; assume CLECs “cause” interference (whether or not true) and therefore should be blocked
 - “Suitability” of particular loops for DSL service should be determined by CLEC and market, not ILEC (e.g., loop length, etc.)
 - Neutral industry standards forum, not ILECs, should develop DSL deployment guidelines, if any

Bandwidth Competition Requires Vigorous Competition to ILECs

- CLECs deployed DSL before any ILEC
- Only competitive entry spurred RBOCs into developing xDSL products
- ILECs have incentive to forestall widescale high-speed DSL deployment to avoid “cannibalizing” profitable T1 services

FCC Section 706 Obligations Clearly Extend to Enhancing Competitive Data Entry

- Other than backbone, RBOC “deregulation” under Section 706 would increase anticompetitive incentives and solidify RBOC DSL market power
- Market forces will require RBOCs to deploy xDSL without forbearance relief, as current deployment announcements demonstrate
- Technical and interconnection issues require NOI/NPRM before FCC action

CERTIFICATE OF SERVICE

I, Amy E. Wallace, do hereby certify on this 14th day of September, 1998, that I have served a copy of the foregoing document via *messenger and U.S. Mail, first-class mail, postage prepaid, to the parties below:


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